

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-1048V

Filed: August 31, 2018

UNPUBLISHED

MARTHA A. BOUDREAU,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Attorneys' Fees and Costs

*Susan M. Cremer, Law Office of Michael Lawson Neff, PC, Atlanta, GA, for petitioner.
Ryan Daniel Pyles, U.S. Department of Justice, Washington, DC, for respondent.*

DECISION ON ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On August 3, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). Petitioner alleges that she suffered a shoulder injury related to vaccine administration ("SIRVA") after receiving an influenza ("flu") vaccination on September 8, 2015. Petition at 1-2. On May 4, 2018, the undersigned issued a decision awarding compensation to petitioner based on the respondent's proffer. (ECF No. 27.)

On August 9, 2018, petitioner filed a motion for attorneys' fees and costs. (ECF No. 32). Petitioner requests attorneys' fees in the amount of \$23,713.20 and attorneys' costs in the amount of \$3,071.55. *Id.* at 1. In compliance with General Order #9,

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

petitioner filed a signed statement indicating that petitioner incurred no out-of-pocket expenses. *Id.* at 1. Thus, the total amount requested is \$26,784.75.

On August 10, 2018, respondent filed a response to petitioner's motion. (ECF No. 33). Respondent argues that "[n]either the Vaccine Act nor Vaccine Rule 13 contemplates any role for respondent in the resolution of a request by a petitioner for an award of attorneys' fees and costs." *Id.* at 1. Respondent adds, however, that he "is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." *Id.* at 2. Respondent "respectfully recommends that the Chief Special Master exercise her discretion and determine a reasonable award for attorneys' fees and costs." *Id.* at 3.

Petitioner has filed no reply.

The undersigned has reviewed the billing records submitted with petitioner's request and finds a reduction in the amount of fees to be awarded appropriate for the reasons listed below.

The undersigned finds it necessary to reduce the hourly rate of Petitioner's counsel Ms. Cremer. Petitioner's counsel billed at a rate of \$385 for 2016 and \$394 for 2017, and \$407 for 2018. The rate of \$350 per hour has been previously awarded to Ms. Cremer for work performed in 2016 and 2017.³ The undersigned finds the rate of \$407 for work performed in 2018 reasonable.⁴ However, as is consistent with other cases in this program, Ms. Cremer's rate is reduced to \$350.00 per hour for work performed in 2016 & 2017. This results in a reduction of \$1,745.90.⁵

On August 28, 2018, petitioner filed an amended statement of case costs and receipts. (ECF No. 35). Due to an "inadvertent clerical error" the rate per page for the copies charges had been miscalculated. *Id.* at 2. Petitioner submits an amended request for attorney costs in the total amount of \$2,072.71.⁶ *Id.* at 2. The undersigned finds the amended request for attorney costs reasonable and awards the request in full.

³ Ms. Cremer was previously awarded the rate of \$350 per hour in *Renfro v. Sec'y of Health & Human Servs.*, 16-0156V, 2017 WL 1709708, (Fed. Cl. Sp. Mstr. April 5, 2017). In her affidavit Ms. Cremer confirms that her "past base rate of \$350 per hour has been paid without objection." (ECF No. 32-3 at 3)

⁴ Ms. Cremer was barred in 1983 and indicates that she has 35 years of legal experience in 2018. The OSM Attorneys' Forum Hourly Rate Fee Schedule for 2018 sets forth rates of between \$407 and \$455 for attorneys with 31 or more years of experience for work performed during calendar year 2018. OSM fee schedules can be found at: <http://www.cofc.uscourts.gov/node/2914>. To the extent this represents an increase from Ms. Cremer's previous rates, an increase is reasonable in light of, *inter alia*, her increasing experience in the Vaccine Program and the positive results she has achieved for her clients.

⁵ This amount consists of $(\$385 - \$350 = \$35 \times 4.5 \text{ hrs} = \$157.50) + (\$394 - \$350 = \$44 \times 36.1 \text{ hrs} = \$1,588.40) = \$1,745.90$.

⁶ In the first motion for attorney fees, petitioner requested a total for \$3,071.55 in attorney's costs. Of that amount, \$1,072.40 was for copy charges. (ECF No. 32-2 at 1). In the amended case costs and receipts

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Based on the reasonableness of petitioner's request, the undersigned **GRANTS IN PART** petitioner's motion for attorneys' fees and costs.

Accordingly, the undersigned awards the total of \$25,038.85⁷ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel Susan M. Cremer.

The clerk of the court shall enter judgment in accordance herewith.⁸

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master

petitioner's request for attorney costs was reduced to \$2,072.71. Of that amount, \$73.56 was for copy charges. (ECF No. 35-1 at 1).

⁷ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. See *generally Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

⁸ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.